



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TRG
Docket No: 7776-99
30 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 6 April 1993 at age 23. The record shows that you served without incident until 15 June 1995, when you received nonjudicial punishment for assault, conspiracy to break restriction and aiding and abetting a breaking of restriction. The punishment imposed included forfeitures of pay and a reduction in rate from MSSN (E-3) to MSSA (E-2).

On 27 June 1995 you were escorted to sick bay by the Master at Arms. The doctor stated, in part, as follows:

... Currently on restriction. Involved in fight with best friend, who is also on restriction. Disclosed that he had sexual relations with best friend in the past. Best friend recently disclosed situation to his wife. Situation becoming uncomfortable ...

No specific diagnosis was made but gender identity and social stressors were noted as contributing to your problems. You were considered to be responsible for your actions and were referred

for routine psychiatric consultation.

Subsequently, you were processed for an administrative discharge by reason of commission of a serious offense and for homosexual conduct. In connection with this processing, you elected to waive your right to request an administrative discharge board. On 10 September 1995, the commanding officer recommended that you be discharged by reason of homosexual conduct with the type of discharge warranted by your service record. However, after review, the discharge authority directed a general discharge by reason of misconduct and you were so discharged on 23 October 1995.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your initial period of good service and your contention that you had psychological problems which impaired your ability to serve. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your commission of serious offenses such as assault. There is no evidence in the record, and you have submitted none, to show that psychiatric problems were sufficient to mitigate or excuse your misconduct. The Board concluded that the general discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director